

# EURO-LETTER

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The ILGA-Europe EUAction Plan and other documents relating to ILGA-Europe can be found at ILGA-Europe's homepage <http://inet.uni-c.dk/~steff/ilgaeur.htm>

An update of the Survey on the Legal Situation for Gays and Lesbians in Europe can be found at <http://inet.uni-c.dk/~steff/survey.htm>

A description of partnership laws and other laws regarding same-sex partners can be found at <http://inet.uni-c.dk/~steff/partner.htm>

## **ANSWER FROM THE EU COMMISSION ON THE LINDHOLM REPORT**

*Letter from Mr. Santer's Cabinet to Steffen Jensen*

"President Santer has asked me to thank you for your letter of 28 February 1997 in which you kindly drew his attention to Parliament's recent adoption of Mrs Lindholm's report on the Commission proposal to amend The Staff Regulations of Officials and Conditions of Employment of Other Servants of The European Communities in respect of equal treatment of men and women.

The Commission's proposed amendment provides that officials have the right under the Staff Regulations, to equal treatment regardless of gender or of sexual orientation and without prejudice to those provisions in the Regulations which require a specific marital status.

As you will recall, among the many amendments adopted by Parliament were some aiming to put the situation of cohabiting couples on the same footing as married couples giving them the same social advantages and the same allowances and benefits laid down" in the Regulations.

The Commission must stress that no discrimination has ever been made against homosexual officials and that it has always stated its support for their dignity and rights. Furthermore, in July 1996 a number of measures outside the Staff Regulations context were taken for the benefit of unmarried couples, both hetero- and homosexual.

Having said that, the Commission does not consider that the right moment to present the Council with a proposal to amend the Staff Regulations so as to put cohabiting couples in the same category as married couples, because the law in the Member States is still too diverse in this area and The Staff Regulations of officials and other members of the European civil service must, up to a point, take this into account. For this reason, the amendments to the Commission's proposal, approved by Parliament when Mrs Lindholm's report was adopted, were not retained.

However, the Commission is aware that this issue is constantly evolving and it remains open to the arguments that you raise in your letter, which are under continuing consideration."

## **LISA GRANT VS SOUTH WEST TRAINS**

*From Stonewall News Letter*

Lisa Grant's case was heard by the European Court of Justice in Luxembourg on Wednesday 9 July. Fifteen

judges and one Advocate General all listened as Cherie Booth QC outlined Lisa's case: that South West Trains in refusing a travel pass for Lisa's partner Jill were in breach of EC law on equal pay. If Lisa were a man living with Jill, married or not, Jill would get the pass. Because Lisa is a woman, she doesn't.

South West Trains were there to defend their right to discriminate, and shamefully so were the British government. Each member state has the right to give its view in cases going before the European Court of Justice, but Britain was the only member state to turn up to defend South West Trains' right to discriminate.

The Government argued that it is not sex discrimination to discriminate on grounds of sexual orientation; they said that they are opposed to such discrimination and would support legislation in the EC to deal with it but this would need agreement by all the member states. However, asked by Radio 5 "Out This Week" whether they would legislate against such discrimination back home where they are in complete control, all they would say was that they would look at this "in due course." (The Government is already considering legislating against age discrimination and religious discrimination and has decided it will legislate against transsexual discrimination but it seems that discrimination against lesbians and gay men is less of a priority).

The European Commission, which also has the right to give its view in such cases, argued strongly that it is sex discrimination to discriminate against a lesbian or a gay man. However, they did not support Lisa Grant's application as they said she was trying to get the same rights as a husband or wife, and this would interfere with the principle that family law is a matter for each of the member states to decide for themselves. (In fact this is not true as Lisa and Jill are only seeking the same rights as other unmarried couples.)

The Advocate General in this case, a Mr Elmer from Denmark, will give his opinion on 30 September. This in turn will serve as guidance to the Court in coming to its decision. In the vast majority of cases the Court follows the Advocate General's opinion, so the opinion will give a good indication of Lisa's chance of success. The Court's decision is not expected until early 1998.

## **AGE OF CONSENT FOR GAYS AT 16 IN UK**

*Stonewall Press release 14 July 1997*

The government have stated today that they will not continue to oppose the case of Euan Sutherland, the

20 year old British boy who, with the backing of Stonewall, has lodged a complaint at the European Court of Human Rights in Strasbourg arguing that the current age of consent is a breach of his human rights - the right of privacy and the right not to be discriminated in his private life.

The Government had until 25 July to respond to Euan's case and were asked by the Commission for a written response to the case also being brought against the Government on this issue by the 17 year schoolboy Chris Morris. The Government have now stated that they will not continue to defend the current discriminatory age of consent (18 for gay men and 16 for heterosexuals and lesbians).

Jack Straw made a pre-election commitment to a free vote on this issue and this is now expected within the next two years. It is widely expected that Parliament will vote overwhelmingly in favour of an equal age of consent.

#### **FRENCH MINISTER ON CONTRACT OF CIVIL UNION**

*From "Le Monde", 13-14 July 1997, translated and forwarded by Alan Reekie*

In a hearing before the French Senate's Social Affairs Committee, the Minister of Employment and Solidarity, Martine Aubry, gave details of the future "civil and social union contract" (CUCS) announced by the Justice Minister Elizabeth Guigou just before the Europride celebrations by homosexuals and in accordance with the commitments made by the Socialist Party while it was in opposition (Le Monde, 24 June 1997).

According to the Press Statement issued by the Committee and published on Friday 11th July, Mrs Aubry emphasised that this contract "should not include provisions regarding marriage nor the adoption of children, but be centred on aspects like living accommodation and discounts on public transport fares". Affirming that "the family must remain the basic unit that is indispensable for society", the Minister raised the question of what "impact on public opinion" the campaign by the homosexual community was likely to have.

Mrs Guigou had stated that "it is not possible to limit the arrangements for uniting two people to the institution of marriage alone" and indicated that the future CUCS would enable people wishing to do so to live together regardless of their sex or family relationship. This "universalist" concept of the CUCS attracted the support of most of the associations

concerned, ranging from the Human Rights League to the trade unions CFTD and CGT.

The demand for the CUCS arose within the associative movement in response to situations caused by the AIDS epidemic: after the death of their homosexual partner, certain persons find themselves without any right to continue renting the apartment they had shared, nor to inherit the property in it, which automatically belongs to the dead partner's relatives even where the couple had acquired it jointly. Today, these associations are demanding that foreigners should be allowed to benefit from the CUCS and that in the case of state employees require to work anywhere it should be taken into account where one partner is transferred. Some go further in claiming parental rights.

At the initiative of Jean-Pierre Michel, MP (RCV-MDC) for the Upper Saone, a Bill was tabled on 24th June in the National Assembly by 21 MPs from the RCV party, under which persons bound by a CUCS would enjoy the same rights as married couples, except for those concerned with artificial insemination and adoption. By limiting its scope to living accommodation and transport, Mrs Aubry indicated that the government is reducing the impact of the future CUCS so far as inheritance, taxation and social security is concerned, and given a sign to those who consider the CUCS to be an attack on the family.

#### **TRANSSEXUALS WIN RIGHT TO FIGHT DISCRIMINATION**

*UK Press Association report 15 July 1997*

Transsexuals have won the legal right to challenge discrimination they face at work because of their sex change.

The Employment Appeal Tribunal decided that discrimination against transsexuals was unlawful under the Sex Discrimination Act.

The landmark ruling was made in the case of a sex-change woman employed by a private firm in Surrey, who cannot be named for legal reasons.

She took her claim of sexual harassment at work to an industrial tribunal, which referred her case to the EAT.

Kamlesh Bahl, chairwoman of the Equal Opportunities Commission, which backed the case, said: "This bold and far reaching decision finally recognises that transsexuals need legal protection against the considerable discrimination they face."

"The law now requires employers to review their employment practices to safeguard against such discrimination in the future."

## **LAW REFORM IN SAN MARINO**

*by Kurt Krickler*

Several gay and lesbian newspapers around Europe have recently reported that San Marino had decriminalised homosexuality. *That is not correct.*

The total ban on homosexuality was abolished in San Marino in 1864. In 1974, however, the San Marinese Parliament adopted a new penal code that came in force in 1975 and contained in article 274 a provision punishing any person who would cause public scandal by habitually committing sexual acts with persons of the same sex. This had obviously been a very vague provision (just like in Romania today) but there are no reports that article 274 had ever been applied. It was the only special provision on homosexuality in the San Marinese penal code. The age of consent has been 14 for all sexual orientations since 1864 (art. 173). However, it is forbidden to seduce juvenile persons between 14 and 18 into sexual corruption, abuse of alcohol or drugs (art. 177).

Here the text of Article 274:

"Atti di libidine con persone del medesimo sesso.

Chiunque abitualmente commette atti di libidine con persone del medesimo sesso, punito, se dal fatto deriva pubblico scandalo, con la prigionia di primo grado e con l'interdizione di secondo grado dai diritti politici e dai pubblici uffici."

## **COURT OF APPEAL CALLS ON PARLIAMENT TO RECOGNISE GAY COUPLES**

*PRESS RELEASE FROM STONEWALL 23 July 1997*

The Court of Appeal this morning called on Parliament to change the law to recognise gay and lesbian couples.

Martin Fitzpatrick, a gay man fighting for the right to the same tenancy protection as heterosexual couples on death of a partner, lost his case but won a significant moral victory.

All three judges said that the law was out of date and called on Parliament to make the necessary changes.

LJ Waite said the restriction of succession rights to heterosexual couples in the Rent Act 1977 was

"offensive to social justice and tolerance because it excludes lesbians and gays." He:

"changes... certainly need to be made, if Parliament is to fulfill its function of reflecting the spirit of our times - in particular the spirit which recognises the value of all abiding relationships the heterosexual, the lesbian, the gay..."

LJ Ward went further and said in a dissenting judgment

"there is no essential difference between a homosexual and a heterosexual couple and accordingly I would find that the appellant had lived with the deceased as his husband or wife."

Martin Fitzpatrick will now seek leave to appeal to the House of Lords.

Angela Mason, Executive Director of Stonewall, said today:

"This is the clearest statement yet by any English court that the law needs to change to recognise the human rights of lesbians and gay men.

Stonewall will now seek to have a private member's bill tabled to give Parliament the opportunity to redress this wrong."

## **GAY HOLOCAUST SURVIVORS TO GET SWISS MONEY**

*By Corydon*

**SUMMARY:** Gay holocaust survivors are eligible to receive assistance from a Swiss fund for Holocaust victims - particularly those Gays for whom the end of World War II didn't put an end to their persecution.

The Government of Switzerland has created a Fund with the aim of giving financial assistance to victims of Nazi persecution. There will be made no distinction between different groups of victims, i.e. Jews, Homosexuals, Roma and Sinti. The Fund is aimed at giving assistance to needy persons who have been persecuted on grounds of race, religion, political opinion or others or who have in other ways become victims of the Nazi Holocaust.

The very general criteria so far fixed are:

- Persons who have not yet received any effective material assistance,
- Who are of old age, and
- Who are double victims (i.e. who have suffered oppression even after World War II), and
- Who live in most precarious material conditions.

The Swiss Government fund will move quickly to make its first disbursement to assist victims of the Nazi Holocaust, including those interned for being gay. The Fund's chairman Dr. Rolf Bloch announced July 7 that the executive board voted at its first meeting to immediately give 17 million Swiss francs (\$11.6 million US) - 10% of its original capital - to the neediest victims. While most of the funds will go to Jewish survivors, 2 million francs will go to gays and other victimized groups. The capital for the memorial Fund was donated by Swiss banks and businesses in the wake of reports that they had profited from Nazi looting and from holding the funds of Nazi victims.

Although the Swiss have used the phrase "double victims" to refer to Eastern European survivors who missed out on compensation received by many of their Western counterparts after the war and who suffered oppression even after World War II, 'gay' Holocaust survivors were literally double victims in that they were still considered criminals in post-war Germany as well as in other countries.

As a result, most gay survivors of concentration camps and other forms of persecution (imprisonment, forced castration, transfer to a delinquent bataillon like the vicious "Strafbataillon Dirlwanger") - and a significantly smaller percentage of gays did survive compared to other groups, it is believed - tried to hide their sexual orientation to avoid imprisonment after their liberation.

Only half a dozen have publicly identified themselves even now.

Nonetheless, the Berne-based National Gay League of Switzerland Pink Cross has been actively lobbying for gay, bisexual, lesbian, and transgendered Holocaust victims and their relatives to obtain their fair share of Swiss assistance.

While estimates of how many gay men died in Nazi concentration camps range as high as one million, a more generally accepted figure among scholars is 10,000 to 15,000 gays. (The stringent anti-gay laws were targeted at men; those lesbians who were incarcerated were more likely to fall under the general label "social deviant.")

Requests for disbursements should be submitted to the Fund not by individuals but by organizations defending the interests of victims.

If necessary, requests emanating from individuals could be submitted to the Fund through Pink Cross - National Gay League of Switzerland. The contact person is Beat Wagner (former Chairman of Pink

Cross - National Gay League of Switzerland and Member of the Advisory Board to the Swiss Fund for Victims of the Holocaust). You may contact Beat Wager by

e-mail: bwagner@sntagblatt.ch

tel. (+41) 1 262 41 84 (home)

(+41) 71 27 27 519 (office)

fax (+41) 71 27 27 476 (office)

The Fund's address is:

Fund for Victims of the Holocaust

c/o Federal Department of Finance

CH - 3003 Berne, Switzerland

Do you know of any gay person living in your country who has been persecuted by the Nazi regime and who responds to the criteria mentioned above?

If you see any possibility to spread this information in your country, by gay media, the general media, the internet or other means, please do so.

## **BRITISH AIRWAYS WILL NOT HIRE HIV-POSITIVES**

*By Rex Wockner*

British Airways refuses to employ people with HIV as pilots or flight attendants, reports the AIDS magazine Positive Nation.

The publication located three people who were denied jobs with the company solely because of their HIV status.

An airline spokesman said the policy was put in place because some countries (including the U.S.) deny entry to HIV-positive foreigners and because HIV-positive people are not supposed to take certain vaccines that are necessary for travel to the Third World, such as the vaccine for yellow fever.

The spokesman also said: "Being positive you cannot predict when it will affect the brain. A pilot's lifestyle, crossing time zones, differing meal times, high stress levels, etc., can run down their immune system."

Virgin Atlantic airlines, on the other hand, welcomes HIV-positive applicants for pilot and flight-attendant positions, Positive Nation said.